IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9862 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRASINH CHHATRASINH ZALA

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH LAKHANI with MR PRAVIN GONDALIYA for Petitioner

MR. D.N. PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

The detenu, who is a police constable, has filed this petition under Article 226 of the Constitution of India, making a grievance that the order of detention passed against him under the provisions contained in the Gujarat Prevention of Anti Social Activities Act, 1985

(PASA for short, hereinafter) is bad, illegal and without jurisdiction.

2. The order of detention dated 28.7.1999 has been passed by the Commissioner of Police, Rajkot City, detaining the petitioner. The grounds of detention are served on the detenu. From the grounds it transpires that the detenu was appointed by order dated 7.10.1993 as an unarmed police constable and since then he was discharging his duties at Vejalpur police station, Ahmedabad. It further appears that since 20.7.1998, the detenu has not reported for duty. It is revealed that on 2.3.1999, the police at Rajkot registered an offence against the detenu, punishable under provisions contained in the Bombay Prohibition Act and was arrested and he is under suspension since then. It is pointed out in the order that the detenu being a police constable, his duty was to protect the person and property of the people. He was required to maintain discipline in the police force. Being a police constable, he has misused his office and knowing full well that there is prohibition, without pass or permit, by committing breach of the Prohibition Act, liquor was imported by the detenu with the assistance of four persons, whose names are disclosed in the grounds of detention. He was found in possession with prohibited liquor along with Tata Sumo No. GJ.1.H.603. It appears that again on 13.4.1999, F.I.R. was registered against the detenu for possessing 70 bottles of liquor of foreign made, the value of which was estimated at Rs.14,000/-. Thus, the detaining authority was primafacie satisfied that the detenu is indulging in nefarious activities, and looking to the activities, the detaining authority has indicated that the detenu is a bootlegger. It is required to be noted that the detaining authority was satisfied that selling of liquor by the detenu and its consumption by the people of that locality was harmful to their health; Their economic condition would also deteriorate on account of consumption of alcohol. There is an indication in the grounds of detention that the detenu was also arrested for offences punishable under section 506 (2). 323. 504 of Indian Penal Code on 13.4.1999 in connection with C.R. No. 45/99 registered at Bhaktinagar Police Station (Rajkot). It is made clear in the grounds of detention that this information is conveyed simply to draw the attention and the same is not used for the purpose of detention.

3. Mr. Lakhani submitted that there is nothing to indicate that the activities of the detenu was prejudicial to the maintenance of public order and public safety. Mr. Lakhani further submitted that in the

instant case, affidavit is not filed by the respondent, who detained the petitioner and there is nothing on the record that after the order was passed, there was forthwith communication with regard to the same to the State Government.

4. So far as the first contention is concerned, it is required to be noted that the Apex Court, in the case of KANUJI S. ZALA vs. STATE OF GUJARAT & ORS. reported in 1999 (5) SC 364 held as under:-

> "4. In our opinion, there is no substance in this contention. In none of the three case relied upon by the learned counsel the point whether public order can be said to have been disturbed on the ground that the activity of the detenu was harmful to the public health arose for consideration. It appears that in those three cases, the detaining authority had not recorded such satisfaction. Moreover, in those cases, the detaining authorities had referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public life was disturbed. In this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health."

4.1 In view of the aforesaid decision of the Apex Court, the first contention raised by Mr. Lakhani is devoid of any merit.

5. Mr. Lakhani submitted that there is no material on record to show that the people who consumed the alcohol has suffered on account of consumption of liquor. It is required to be noted that the Bombay Prohibition Act itself is in force with a view to see that nefarious activities are controlled so that health of people may not be adversely affected and social life may not be disturbed. This fact is required to be borne in mind, and the authority has taken this fact into consideration.

6. Learned counsel submitted that earlier incident was referred in the order of detention and by that prejudice has been caused inasmuch the detaining authority though has considered the grounds, while passing the order, the detaining authority has stated that the same has not been taken into consideration. Learned counsel Mr. Lakhani has referred to a judgment

of the Division Bench of this Court pronounced on 6th August 1993 in Special Criminal Application No. 1705 of 1992. The Division Bench considered the facts of the case and pointed out in paragraph 4 of the judgment that:

"However, we do not lay down as a broad proposition of law that a mere reference to past activity simply would also vitiate the order of detention".

6.1 In that case, the Court has reproduced in vernacular the past history of the detenu. Reading that part, it becomes clear that atleast the said detenu was involved in six offences. Considering this, the Division Bench held that the order is vitiated. The Division Bench was aware about the judgment of the Apex Court in the case of JOHN MARTIN vs. STATE OF WEST BENGAL reported in AIR 1975 SC 775. In that case, the history sheet wherein incidents set out were considered and an argument was advanced that it might have weighed with the District Magistrate in inducing the requisite subjective satisfaction. The Court pointed out that the material was of a general nature about antecedents of the petitioner and that could not possibly have had any impact in the process of reaching subjective satisfaction. The Court accepted the statement of the District Magistrate in his affidavit in reply that the two incidents set out in the grounds were the only material on which he has based his subjective satisfaction for the purpose of making the order of detention. The Court rejected the contention that other material must have vitiated the subjective satisfaction.

6.2 In the instant case, the authority passing the order has specifically stated that the incident for which the detenu was arrested on 13.4.99 has not been taken into consideration for detaining the detenu. Considering the judgment of the Apex Court and the observations made by the Division Bench of this Court, I am of the view that the contention raised on behalf of the detenu is required to be rejected.

7. Mr. Lakhani, learned counsel has successfully pointed out to the Court that the detaining authority despite the fact that opportunity was given to it, has not placed before the Court the material in the form of an affidavit to satisfy that the order of detention was forthwith forwarded to the State Government. Section 3 (3) Act reads as under :-

" when any order is made under this section by an

authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime it has been approved by the State Government".

8. Mr. Patel, learned Assistant Government Pleader appearing for the State submitted that the authorities are expected to act in accordance with law, and the fact that the detenu is still under detention shows that the report must have been submitted to the State Government. It is required to be noted that when there is a specific ground raised in the petition, it becomes the duty of the detaining authority to point out to the Court not only that the order has been passed in accordance with law, but also that the same has been communicated to the State Government in accordance with law. It is required to be noted that if section 3 of PASA is perused, it becomes clear that if the State Government is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order, may make an order directing that such person be detained, if it is necessary so to do, but when such order of detention is made by an officer authorised under this section, the officer has to forthwith report the fact to the State Government. Therefore, it becomes the duty of the detaining authority to communicate to the State Government. In ground "J", a specific contention is raised, which reads as under:-

"It is respectfully submitted that in the instant case the detaining authority has failed to forthwith report the facts to the State Government together with documents and material and if it is forwarded then there is a delay in forwarding the same and therefore, there is a clear breach of mandatory provisions contained in sub-sec., 3 of sec. 3 of the Act and therefore, the order of detention is required to be quashed and set aside."

9. In the instant case, on behalf of the State Government, an affidavit is filed by J.R. Rajput, Under Secretary to the Government of Gujarat, Home Department (Special), Sachivalaya, Gandhinagar but the affidavit is conspicuously silent whether the order made by the authorised officer was communicated to the State Government forthwith, and in accordance with the

provisions indicated therein. Thus, an inference is required to be drawn that there is breach of section 3 of the Act.

10. It is required to be noted that the detaining authority, knowing full well that the detenu is a police constable and is required to discharge duties with discipline, of protecting the person and property of citizens, has detained the detenu on account of the activities which are harmful to the health of the people. Surprisingly, nothing is placed before the Court to point out that there is compliance with section 3 (3) of the Act.

11. As there is breach of section 3 of the Act, the continued detention of the detenu is required to be held as bad and illegal. The detenu is ordered to be released forthwith if not required in any other case. Rule made absolute.

csm./ (B.C. PATEL, J.)